

ORDINANCE NO. 18-2009

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MONTGOMERY, ALABAMA, AS FOLLOWS:

SECTION 1. The Code of Ordinances Appendix C-Zoning, Article VI, Section 10.14.1 is hereby amended to read as follows:

10.14.1 [Vending district]

A. Findings and Purpose

1. The primary purpose of the public streets and sidewalks is the use by vehicular and pedestrian traffic.
2. Vending on the public sidewalks promotes the public convenience by contributing to an active and attractive pedestrian environment.
3. Reasonable regulation of sidewalk vending is necessary to protect the public health, safety and welfare.
4. The regulations contained in this ordinance do not prohibit free speech but merely regulate activities which are commercial in nature.
5. The granting of licenses for the use of public sidewalks is subject to such conditions as the City of Montgomery may impose to protect the public health, safety, welfare and convenience.

B. Definitions

For purposes of this article, the following definitions shall apply:

1. Vending districts means the zone or area specifically designated for sidewalk vending.
2. Cart means any portable vending device, pushcart, or any other wheeled vehicle or device which may be moved without the assistance of a motor and which is not required to be licensed and registered by the Department of Motor Vehicles, used for the displaying, storing or transporting of articles offered for sale by a vendor, and which does not exceed four (4) ft. in width, six (6) ft. in length, excluding trailer hitch or handle bars, and five (5) ft. in height, excluding canopy or cover. A cart that is towable by means of a trailer hitch is permitted provided it does not exceed the aforementioned size limits.
3. Vendor means any person engaged in the selling, or offering for sale, of food, beverages or merchandise on the public streets or sidewalks from a cart or kiosk.
4. City means The City of Montgomery.
5. Kiosk means a small roofed structure, typically located on a sidewalk with one or more open sides used to vend merchandise.
6. Use of the term cart hereafter shall be interpreted to include kiosk.

C. Permitted Areas (legal description)

Commence at the SE corner of Section 12, T16N, R17E. Run north along the East line of said section a distance of 830 ft. to the south-southeast corner of the intersection of South Court Street and Washington Avenue. This being the Point of Beginning. Thence run West a distance of 62 ft. to the northwest right of way of Church Street. Thence run North a distance of 65 ft. to a point along the southeastern perimeter of the One Court Square building. Thence run along the eastern building perimeter a distance of 655 ft. more or less to the northernmost corner of said building, to include the park at Court Square, adjacent to and on the east side of said building. Thence run S51°W a distance of 940 ft. to a point on the southeast Right of Way of Montgomery Street about mid block between Molton and Catoma Streets. Thence run N40°W a distance of 2,055 ft. to a point along the Alabama River. Thence follow a course upstream along a curve, concave northwesterly, whose radius is 2,250 ft.; with a chord bearing N27°E, for a distance of 1,958 ft. Thence run S89.635°E a distance of 82.62 ft. to the northwest corner of parcel 11-01-12-01-000-019.000. Thence leaving the river, run along the northern boundary of said parcel the following courses: N89.155°E for 306 ft.; S0.377°W for 29.325 ft.; N90°E for 149.283 ft.; N25.587°E for 85.56 ft.; N90°E for 37.503 ft. to the northeast corner of said parcel adjacent to the western ROW of CSX. Thence run S64°E a distance of 825.5 ft. to the southeast corner of the intersection of North Court Street and Pollard Street. Thence run South a distance of 1,609 ft. to the southeast corner of North Court Street and Madison Avenue. Thence run N87.7°E for a distance of 52 ft. Thence run S2.5°E a distance of 273.5 ft. to the northwest corner of the intersection of Coosa Street and Monroe Street. Thence run S38°E 92.7 ft. to the northeast corner of the intersection of Coosa Street and Monroe Street. Thence run N87.4°E a distance of 2,755 ft. to the northeast corner of the intersection of Monroe Street and Union Street. Thence run S2.5°E a distance of 960 ft. to the southeast corner of the intersection of Union Street and Washington Avenue. Thence run S87.5°W a distance of 2,853 ft. to the southeast corner of the intersection of Washington Avenue and South Court Street. Thence run S38.55°W a distance of 82 ft. to the Point of Beginning.

D. Permitted Merchandise

No merchandise shall be sold by a vendor from a cart or kiosk in a vending district except the merchandise approved. Permitted merchandise shall be limited to rental of boats, jet skis (or similar water sports equipment), food and non- alcoholic beverages such as, but not limited to, biscuits or sandwiches made from biscuits, hot dogs, sausages, bagels, pastries, candy, fresh fruit, tamales, burritos, kebabs, sushi, chicken, beef or pork meat, prepackaged sandwiches, chips, popcorn, nuts, pretzels, ice products, ice cream, milk products, frozen yogurt, hot

and cold beverages containing no alcohol, and condiments related to permitted merchandise. Tobacco products are not permitted merchandise.

E. *License Required*

1. It shall be unlawful to sell, or offer for sale, any food, beverage or merchandise on any street or sidewalk within the city from a cart without first obtaining a business license therefore.
2. A nonexclusive license for not more than one (1) year may be granted for the operation of one (1) or more carts at locations within a vending district.
3. An annual license fee of \$300 per cart shall be paid in advance. One business license for each cart shall be required at the applicable rate pursuant to the business license ordinance.
4. A license may not be transferred in any manner.
5. The provisions of this article shall not apply to festivals, community projects, or public events which occur on a periodic basis and which are specifically approved by City Council. (Jubilee Cityfest is an example of a public event for which this license would not be valid and to which vendors must obtain an additional permit from the festival sponsor for time and locations available within the Jubilee Cityfest.)

F. *Application for License*

The application for a vendor's license shall include the following information:

1. The name, home and business address of the applicant, and the name and address of the owner, if other than the applicant, of the cart to be used in the operation of the vending business.
2. A description of the type of food, beverage or merchandise to be sold.
3. A list of the proposed location or locations of the vending cart(s) for which a license is sought.
4. A description and photograph or drawing of the cart or carts proposed to be used.
5. The location and description of off-street cart storage facilities.
6. The method and routes for transporting carts to and from sidewalk locations and storage facilities.
7. The names, addresses and percentage of stock owned by shareholders in a corporate applicant, and the percentage interest of each partner in a partnership applicant.
8. Copy of insurance policy or binder.
9. Such information as the applicant may choose or as may be requested by the city.

G. Issuance

1. Any license issued pursuant to this ordinance shall be subject to modification by ordinance at any time deemed necessary for protection of public interests. Any license shall be granted as a privilege and not as a matter of right. Vending at any location may be temporarily suspended or relocated by the city upon reasonable notice when private or public construction or activities of the city make it in conflict with, unsafe or impractical to allow vending.
2. In determining the acceptability of an application, the city may consider any factors presented in the application, at a public hearing, or in any staff report or investigation of matters related to the past record and ability of the applicant to perform conditions of this ordinance and the license in a manner which serves the public interests.
3. When an applicant is denied a license, the applicant shall be notified in writing the reason for the denial for the license no later than 30 days after the filing of completed application for a vendor's license.
4. It will be presumed that the owner of a food service business (restaurant) selling the same merchandise approved for a location within 100 feet of the principal public entrance to the food services business area can best serve the public convenience and interests.

H. Inspection and Insurance

1. A certificate of inspection or compliance as required by applicable health regulations and evidence of compliance with the health code shall be filed with the city clerk before any sales are made from carts.
2. Proof of an insurance policy, issued by an insurance company licensed to do business in the State of Alabama, protecting the owner and the city from all claims for damages to property and bodily injury, including death, which may arise from operations under or in connection with the owner shall be filed with the city clerk prior to issuance of the license and annually. Such policy shall be a general liability policy naming the vendor as insured and the City of Montgomery as an additional insured in an amount not less than \$500,000 per occurrence and \$1,000,000 aggregate combined single limit for bodily injury, personal injury and property damage. The policy shall specifically provide that the insurer shall provide written notice to the City of Montgomery at least 30 days prior to cancellation, termination or modification of the coverage provided to the city.

I. Locations

No cart location in a vending district shall be:

- 1. Within 100 feet of the principal public entrance to any food service business (restaurant) area not owned by the vendor if said restaurant sells the same merchandise approved for sale by a vendor.**
- 2. At any location which does not provide a clear passageway for pedestrians of at least four (4) feet in width.**
- 3. Within 10 feet of any entranceway to any building.**
- 4. Within 50 feet of any driveway entrance to a police or fire station, or within 25 feet of any other driveway.**
- 5. At any location where it would obstruct pedestrian traffic at crosswalks or sight clearance at intersections.**
- 6. Within 25 feet of any bus stop sign.**
- 7. Away from curbside of street.**
- 8. In a vehicle parking space or travel lane of any street.**
- 9. Within 100 feet of the entrance of a church, temple, synagogue or mosque.**

J. Prohibited Conduct

No vendor shall:

- 1. Vend on any sidewalk except those permitted by this or any other City of Montgomery ordinance.**
- 2. Vend between: 10:00 p.m. and 6:00 a.m. of the following day.**
- 3. Leave any cart unattended.**
- 4. Store, park, or leave any cart overnight on any street or sidewalk.**
- 5. Sell food or beverages for immediate consumption unless there is a litter receptacle which is available for patrons' use.**
- 6. Leave any location without first picking up, removing and disposing of all trash or refuse remaining from sales made by the vendor.**
- 7. Allow any items relating to the operation of the vending business to be placed anywhere other than in, on or under the cart.**
- 8. Set up, maintain or permit the use of any table, crate, carton, rack, or any other device to increase the selling or display capacity of the cart.**
- 9. Solicit or conduct business with persons in motor vehicles.**
- 10. Sell anything other than that for which a license to vend has been issued.**
- 11. Sound or permit the sounding of any device, including but not limited to, generators or any other loud mechanisms or equipment which produces a loud and raucous noise or use or operate any loud speaker,**

public address system, radio, sound amplifier or similar device to attract the attention of the public.

12. Vend without the insurance coverage specified in this ordinance.
13. Allow the cart or any other item relating to the operation of the vending business to lean against or hang from any building or other structure lawfully placed on public property without the owner's permission.
14. Locate carts in any manner to impede pedestrian access to vehicle(s) parked in adjacent parking spaces.
15. Burn wood or charcoal.
16. Produce smoke.
17. Vending within prohibited locations.
18. Vending alcoholic beverages of any description.

K. Advertising

No advertising shall be permitted on any cart except to identify the name or identity of the product or item for sale, or the name of the vendor, and the posting of prices.

L. Renewal

All licenses are valid, unless revoked or suspended prior to expiration, during the license year for which issued regardless of date of issuance.

M. Denial, Suspension and Revocation

Any license may be denied, suspended or revoked by the City of Montgomery for any of the following reasons:

1. Fraud or misrepresentation contained in the application for a license.
2. Fraud or misrepresentation made in the course of carrying on the business of vending.
3. Conduct of the licensed business in such manner as to create a public nuisance, or constitute a danger to the public health, safety, welfare or morals.
4. Conduct which is contrary to any of the provisions of this article or the license.
5. A determination by the City of Montgomery that a location or locations should be removed from the vending district area.
6. Unfit – according to Health Department standards, regulations or rules, or any other reasonable standard.

SECTION 2. This ordinance shall take effect upon its passage, approval and publication, or as otherwise provided by law.

ADOPTED this 5th day of May, 2009.

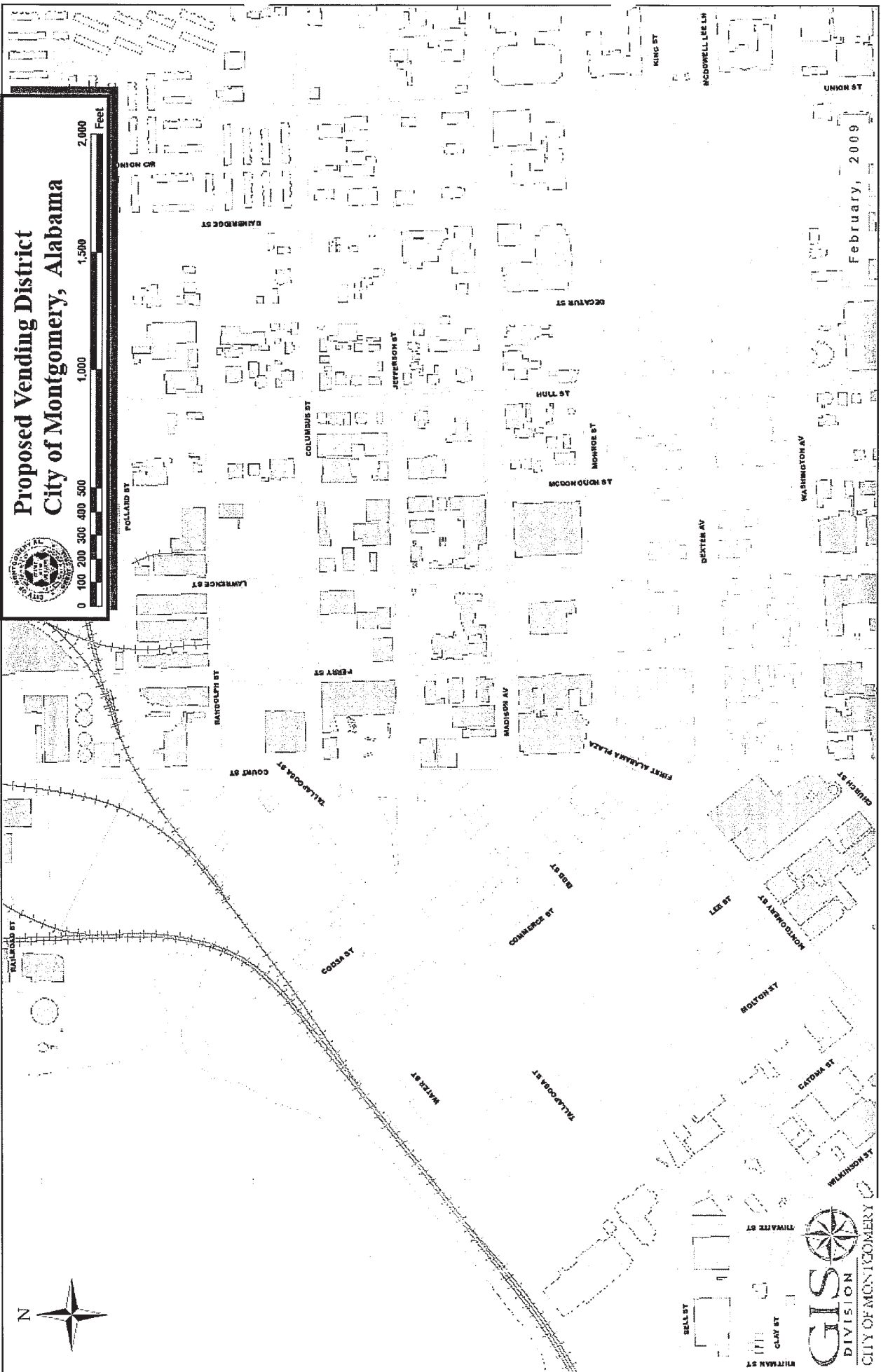

BRENDA GALE BLALOCK, CITY CLERK

APPROVED: MAY 08 2009


TODD STRANGE, MAYOR



Proposed Vending District City of Montgomery, Alabama



February, 2009